

REMARKS/ARGUMENTS

Claims 1-8 are pending in the application. Claim 1 has been amended. No new matter has been added. Reconsideration of the claims is respectfully requested.

Claim Rejections – 35 U.S.C. § 112/2

In paragraph 2 on page 2 of the Office Action, claim 1 is rejected under 35 U.S.C. § 112 second paragraph for failing to set forth the subject matter which Applicant(s) regard as their invention. The Applicants respectfully traverse this rejection, but have amended the application to provide clarification without changing the scope of the claim. The previous claim language was a translation from the priority document and thus difficult to understand, but definite enough to examine. Claim 1 has been amended. It is believed that all claims comply with 35 U.S.C. § 112.

Claim Rejections – 35 U.S.C. § 102

On page 3 of the Office Action, claims 1-2, 4-5 and 7 are rejected under 35 U.S.C. §102 (e) as being anticipated by Hollemans et al (US Publication No. 2007/0036363).. § 103

In the response to the previous office action, the undersigned stated that Hollemans was not prior art. That is still true. The examiner has stated that the foreign priority of the present case has “not been properly established”. Without more information, the undersigned is unable to respond to such a statement because it is vague and unsupported by facts which would allow a reasonable applicant to respond.

According to the file history of the present application, it was filed as a PCT application on 15 September 04 based on a Danish priority claim of 26 September 03. The examiner acknowledged the sec 119 priority claim in both office actions.

Consequently, the effective filing date of this application is 26 September 03.

On the other hand, the earliest date the Hollemans reference at best can be used as prior art as of its national stage entry date of 17 Mar 06 or its PCT filing date of 1 Sept. 04. Neither of these dates is prior to the effective filing date of the present application. Note: the EP priority date of 22 Sept. 03 for the Hollemans reference is not

available for prior art purposes. No foreign priority date qualifies as a prior art under any section of 35 USC 102.

Therefore, the only reference currently being used to reject this application is not available and either the case should be allowed or the examiner should reissue a new (non-final) action with relevant prior art.

NOTE: it would be improper to issue a **final rejection** of this application on new prior art, if any exists. The issues raised by the examiner in the first action were resolved by the first action response and the second action raises the same issue without sufficient clarity for the applicant to respond. The amendment to claim 1 under sec 112/2 does not change the scope of the claim but clarifies stilted language which, could have been objected to in the first office action. If a final office action is issued, it will be petitioned to the Commissioner as an improper action by the examiner.

The examiner was telephoned on this issue but contact was not successful but the examiner is requested to telephone the undersigned.

CONCLUSIONS

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (612) 436-3152.

Respectfully submitted,
Altera Law Group, LLC
Customer No. 22865

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By: _____/Michael Lasky/_____
Michael B. Lasky
Reg. No. 29,555
MBL/